IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLOTTE TURNER, o/b/o JL	:	CIVIL ACTION
	:	
v.	:	NO. 05-3509
	:	
JO ANNE B. BARNHART,	:	
Commissioner of Social Security	:	

MEMORANDUM AND ORDER

AND NOW, this 21st day of August, 2006, upon consideration of the cross-motions for summary judgment filed by the parties (Doc. Nos. 9 and 12) and the reply thereto (Doc. No. 14), the court makes the following findings and conclusions:

1. On October 23, 2003, Charlotte Turner ("Turner") protectively filed for supplemental security income ("SSI") on behalf of her minor son, JL, under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1383f, alleging an onset date of January 2, 2001. (Tr. 42; 61-65). Throughout the administrative process, including an administrative hearing held on February 3, 2005 before an administrative law judge ("ALJ"), Turner's claims were denied. (Tr. 4-6; 9-24; 27-41; 43-47). Pursuant to 42 U.S.C. § 405(g), on September 14, 2005, Turner filed her complaint in this court seeking review of that decision.

2. In his decision, the ALJ concluded that JL had severe impairments consisting of attention deficit hyperactivity disorder, developmental delays, oppositional defiant disorder and night terrors but that his impairments did not meet, medically equal or functionally equal a listing and, thus, he was not disabled. (Tr. 13 ¶ 4; 17 ¶ 2; 23 ¶ 1; 23 Findings 4, 5, 7).[1]

3. The Court has plenary review of legal issues, but reviews the ALJ's factual findings to determine whether they are supported by substantial evidence. Schaudeck v. Comm'r of Soc. Sec., 181 F.3d 429, 431 (3d. Cir. 1999) (citing 42 U.S.C. § 405(g)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting Consol. Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)); see also Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979).

4. Although the ALJ's opinion was quite thorough, I find that the rationale for one of his conclusions was not sufficiently and clearly stated, making it impossible for me to properly review the case. As a result, this case must be remanded in order for the ALJ to clarify his reasoning.

A. While discussing whether JL met or medically equaled a listing, the

[1] All numbered paragraph references to the ALJ's decision begin with the first full paragraph on each page.

ALJ acknowledged that the Philadelphia County Early Intervention Process ("Early Intervention") estimated that JL's language and social/emotional development were at a 20 month-old level when he was 36 months old, which would represent "development generally acquired by children no more than two-thirds of the child's chronological age in two areas." (Tr. 17 ¶ 1; 112). As a result, if credited, Early Intervention's assessment would meet the B criteria for Listing 112.02 (Organic Mental Disorders) and likely result in a finding of disability. However, the ALJ did not credit this assessment and found that "Early Intervention's estimate of the child's development is not an appropriate medical finding because Early Intervention is not a medical treatment entity." (Id.).[2] It is unclear what the ALJ meant when he determined that Early Intervention was not a "medical treatment entity" as this phrase does not appear in any relevant federal cases or regulations.

Turner contends that the ALJ should have given credit to Early Intervention's assessment because it is an evaluation report from an early intervention interdisciplinary team signed by a licenced speech-language pathologist (an acceptable medical source) and, thus, it is acceptable medical evidence.[3] Listing 112.00D(3) (stating that "programs of early intervention involving occupational, physical, and speech therapists, nurses, social workers, and special educators, are a rich source of data . . . . A report of an interdisciplinary team that contains the evaluation and signature of an acceptable medical source is considered acceptable medical evidence rather than supplemental data."); 20 C.F.R. § 416.913(a)(5) (stating that an acceptable medical source includes "[q]ualified speech-language pathologists, for purposes of establishing speech or language impairments only"); see also 20 C.F.R. § 416.924a (b)(7)(i) & (iii) (discussing how early intervention records are important factors to consider in evaluating impairments). As a result, Turner alleges that because the report is from an acceptable medical source and is acceptable medical evidence, Early Intervention should be considered a medical treatment entity.

Defendant counter-argues that the ALJ was not concluding that Early Intervention's records were not acceptable medical evidence, as argued by Turner, but that the ALJ was explaining that the individual examiners of the Early Intervention team were not treating sources and, thus, the opinion was not entitled to controlling weight. See 20 C.F.R. § 416.927(d)(2). Essentially, defendant appears to argue that the ALJ substituted the phrase "medical treatment entity" for "treating physician" and then, as a result of finding that Early Intervention was not a medical treatment entity, declined to give controlling weight to the assessment. If the ALJ had been discussing the controlling weight given to the opinions of treating physicians, he would have so stated. Moreover, the ALJ not only declined to afford the assessment controlling weight but decided not to rely on it at all. (Tr. 17 ¶ 1). Therefore, I cannot agree with Defendant's interpretation.

The ALJ also concluded that subsequent evidence showed that JL's delays in language had significantly improved and, thus, Early Intervention's opinion was no

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[2] In order to meet the B criteria of this listing the deficits must be demonstrated by an appropriate standardized test or other appropriate medical findings. (Listing 112.02B(1)(d)) (emphasis added).

[3] Turner argues that a speech-language pathologist was part of the Early Intervention team and signed some of the pages of the report and that other speech-language therapists signed other relevant evaluations. (Tr. 101-102; 125; 136; 137).

longer relevant. (Tr. 17 ¶ 1). However, in support of this conclusion, the ALJ cited only to Exhibit 8-F, a "comprehensive biopyschosocial evaluation" performed by Richard Margolis, M.D. to which, three pages deeper into the decision, the ALJ properly declined to give significant weight. (Tr. 19 ¶ 10; 192-201). The ALJ discounted Dr. Margolis' evaluation because it was based on the subjective opinions of Turner rather than clinical or objective testing and the conclusions therein were not supported by the record evidence. (Id.). Therefore, Exhibit 8-F does not appear to be very compelling evidence with which to discount Early Intervention's opinion.

As a result, I am unable to properly determine the reasoning behind the ALJ's decision to discredit the opinion of Early Intervention that JL functioned at a 20 month-old level in language and social/emotional development when he was 36 months old. Upon remand, the ALJ shall reassess the opinion of Early Intervention and more fully explain his conclusions regarding this evidence.

B. Turner also contends that the ALJ failed to discuss how he considered JL's behavior outside of a structured setting pursuant to 20 C.F.R. § 416.924a(b)(5)(iv)(C). The regulation does not command the ALJ to explicitly discuss his consideration of these factors in the decision and there is no indication that the ALJ did not consider JL's functioning outside of his structured program. However, because this case must be remanded for clarification, the ALJ should also take that opportunity to further discuss JL's ability to function outside of a structured setting and in typical settings. Id.; 20 C.F.R. § 416.924a(b)(3)(i).

Upon careful and independent consideration, I find that it is unclear whether the ALJ's conclusions regarding Early Intervention's estimate of JL's development are supported by substantial evidence and legally sufficient. As a result, the action must be remanded to the Commissioner under sentence four of 42 U.S.C. § 405(g). Therefore, it is hereby **ORDERED** that:

5. The motion for summary judgment filed by Charlotte Turner is **GRANTED** to the extent that the matter is **REMANDED** for further proceedings consistent with this order;

6. The motion for summary judgment filed by the Commissioner of Social Security is **DENIED**; and

7. The Clerk of Court is directed to mark this case closed.

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LOWELL A. REED, JR., S.J.